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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SIDNEY NAIMAN, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

STEPHENS MATTHEWS
MARKETING, INC. and DOES 1
through 10, inclusive, and each of
them,

Defendant.

) Case No.
)
) **CLASS ACTION**
)
) **COMPLAINT FOR VIOLATIONS**
) **OF:**
)
) 1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
) 2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
)
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) **DEMAND FOR JURY TRIAL**
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CLASS ACTION COMPLAINT

1 Plaintiff SIDNEY NAIMAN (“Plaintiff”), individually and on behalf of all
 2 others similarly situated, alleges the following upon information and belief based
 3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
 6 similarly situated seeking damages and any other available legal or equitable
 7 remedies resulting from the illegal actions of STEPHENS MATTHEWS
 8 MARKETING, INC.. (“Defendant”), in negligently, knowingly, and/or willfully
 9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
 10 Consumer Protection Act, *47. U.S.C. § 227 et seq.* (“TCPA”) and related
 11 regulations, specifically the National Do-Not-Call provisions, thereby invading
 12 Plaintiff’s privacy.

13 **JURISDICTION & VENUE**

14 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
 15 a resident of California, seeks relief on behalf of a Class, which will result in at
 16 least one class member belonging to a different state than that of Defendant, a
 17 California company who does business within and beyond the state of California.
 18 Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the
 19 TCPA, which, when aggregated among a proposed class in the thousands, exceeds
 20 the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity
 21 jurisdiction and the damages threshold under the Class Action Fairness Act of 2005
 22 (“CAFA”) are present, and this Court has jurisdiction.

23 3. Venue is proper in the United States District Court for the Northern
 24 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*
 25 because Defendant does business within the state of California and Plaintiff resides
 26 within this District.

27 **PARTIES**

28 4. Plaintiff, SIDNEY NAIMAN (“Plaintiff”), is a natural person residing

¹ in San Ramon, California and is a “person” as defined by 47 U.S.C. § 153 (39).

2 5. Defendant, STEPHENS MATTHEWS MARKETING, INC.
3 (“Defendant”) is a marketing company and is a “person” as defined by 47 U.S.C. §
4 153 (39).

5 6. The above-named Defendant, and its subsidiaries and agents, are
6 collectively referred to as “Defendant.” The true names and capacities of the
7 Defendant sued herein as DOE DEFENDANT 1 through 10, inclusive, are
8 currently unknown to Plaintiff, who therefore sues such Defendant by fictitious
9 names. Each of the Defendant designated herein as a DOE is legally responsible
10 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
11 Complaint to reflect the true names and capacities of the DOE Defendant when
12 such identities become known.

13 7. Plaintiff is informed and believes that at all relevant times, each and
14 every Defendant were acting as an agent and/or employee of each of the other
15 Defendant and was acting within the course and scope of said agency and/or
16 employment with the full knowledge and consent of each of the other Defendant.
17 Plaintiff is informed and believes that each of the acts and/or omissions complained
18 of herein was made known to, and ratified by, each of the other Defendant.

FACTUAL ALLEGATIONS

20 8. Beginning in or around March 2019, Defendant contacted Plaintiff on
21 Plaintiff's cellular telephone number ending in -6443, in an attempt to solicit
22 Plaintiff to purchase Defendant's services.

23 9. Defendant used an “automatic telephone dialing system” as defined
24 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

25 10. Defendant contacted or attempted to contact Plaintiff from multiple
26 telephone numbers.

27 11. Defendant's calls constituted calls that were not for emergency
28 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

1 12. Defendant's calls were placed to telephone number assigned to a
2 cellular telephone service for which Plaintiff incurs a charge for incoming calls
3 pursuant to 47 U.S.C. § 227(b)(1).

4 13. During all relevant times, Defendant did not possess Plaintiff's "prior
5 express consent" to receive calls using an automatic telephone dialing system or an
6 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
7 227(b)(1)(A).

8 14. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
9 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

CLASS ALLEGATIONS

12 15. Plaintiff brings this action individually and on behalf of all others
13 similarly situated, as a member the proposed class (hereafter, jointly, "The Class").

14 16. The class concerning the ATDS claim for no prior express consent
15 (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

23 17. Plaintiff represents, and is a member of, The ATDS Class, consisting
24 of all persons within the United States who received any collection telephone calls
25 from Defendant to said person's cellular telephone made through the use of any
26 automatic telephone dialing system or an artificial or prerecorded voice and such
27 person had not previously not provided their cellular telephone number to
28 Defendant within the four years prior to the filing of this Complaint.

1 18. Defendant, its employees and agents are excluded from The Class.
2 Plaintiff does not know the number of members in The Class, but believes The
3 Class members number in the thousands, if not more. Thus, this matter should be
4 certified as a Class Action to assist in the expeditious litigation of the matter.

5 19. The Class are so numerous that the individual joinder of all of its
6 members is impractical. While the exact number and identities of The Class
7 members are unknown to Plaintiff at this time and can only be ascertained through
8 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
9 The Class includes thousands of members. Plaintiff alleges that The Class
10 members March be ascertained by the records maintained by Defendant.

11 20. Plaintiff and members of The ATDS Class were harmed by the acts of
12 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
13 and ATDS Class members via their cellular telephones thereby causing Plaintiff
14 and ATDS Class members to incur certain charges or reduced telephone time for
15 which Plaintiff and ATDS Class members had previously paid by having to retrieve
16 or administer messages left by Defendant during those illegal calls, and invading
17 the privacy of said Plaintiff and ATDS Class members.

18 21. Common questions of fact and law exist as to all members of The
19 ATDS Class which predominate over any questions affecting only individual
20 members of The ATDS Class. These common legal and factual questions, which
21 do not vary between ATDS Class members, and which March be determined
22 without reference to the individual circumstances of any ATDS Class members,
23 include, but are not limited to, the following:

24 a. Whether, within the four years prior to the filing of this
25 Complaint, Defendant made any telemarketing/solicitation call
26 (other than a call made for emergency purposes or made with
27 the prior express consent of the called party) to a ATDS Class
28 member using any automatic telephone dialing system or any

1 artificial or prerecorded voice to any telephone number
2 assigned to a cellular telephone service;

3 b. Whether Plaintiff and the ATDS Class members were damaged
4 thereby, and the extent of damages for such violation; and
5 c. Whether Defendant should be enjoined from engaging in such
6 conduct in the future.

7 22. As a person that received numerous telemarketing/solicitation calls
8 from Defendant using an automatic telephone dialing system or an artificial or
9 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
10 claims that are typical of The ATDS Class.

11 23. Plaintiff will fairly and adequately protect the interests of the members
12 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
13 class actions.

14 24. A class action is superior to other available methods of fair and
15 efficient adjudication of this controversy, since individual litigation of the claims
16 of all Classes members is impracticable. Even if every Classes member could
17 afford individual litigation, the court system could not. It would be unduly
18 burdensome to the courts in which individual litigation of numerous issues would
19 proceed. Individualized litigation would also present the potential for varying,
20 inconsistent, or contradictory judgments and would magnify the delay and expense
21 to all parties and to the court system resulting from multiple trials of the same
22 complex factual issues. By contrast, the conduct of this action as a class action
23 presents fewer management difficulties, conserves the resources of the parties and
24 of the court system, and protects the rights of each Classes member.

25 25. The prosecution of separate actions by individual Classes members
26 would create a risk of adjudications with respect to them that would, as a practical
27 matter, be dispositive of the interests of the other Classes members not parties to
28 such adjudications or that would substantially impair or impede the ability of such

non-party Class members to protect their interests.

26. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of The Class as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

27. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

28. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

29. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b), Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

30. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

31. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above.

32. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
2 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

3 33. As a result of Defendant's knowing and/or willful violations of 47
4 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of
5 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
6 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 34. Plaintiff and the Class members are also entitled to and seek injunctive
8 relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

35. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 27th day of May, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff